



TEXAS HOUSE OF REPRESENTATIVES

**Committee on
Environmental Regulation**

74th Texas Legislature

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Opinion Committee

RQ-857

Warren Chisum
Chairman

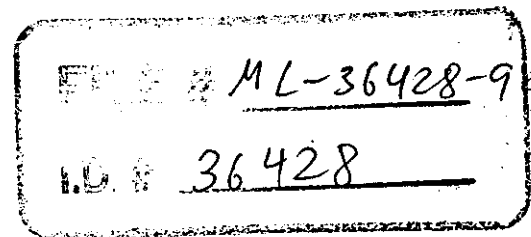
Mike Jackson
Vice Chairman

October 11, 1995

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Capitol Station
Austin, Texas 78711-2548

ATTENTION: Opinions Division

Dear General Morales,



I am writing to request an attorney general opinion on whether a municipally granted franchise applies to an independent school district.

The Pasadena Independent School District (PISD) lies partially within the city of Pasadena, which is a home-rule municipality, and partially within the limits of three other municipalities. The City of Pasadena has by ordinance granted an exclusive franchise that authorizes a single vendor to collect garbage within the municipal limits, while the three other municipalities have not granted franchises limiting garbage service in their respective boundaries to a single provider. PISD currently uses the garbage collection services of the franchisee within the City of Pasadena and is billed for those services by the vendor. PISD contracts with a different vendor selected by the district through competitive bidding for garbage collection services within the remainder of the district. The price charged for the services within the city of Pasadena is more than twice the amount charged by the vendor used by PISD in the remainder of the district. PISD estimates that it could save approximately \$200,000 a year if it were able to competitively select a vendor to serve the school district in the City of Pasadena. ←

My question is whether PISD is bound by the franchise granted by the City of Pasadena and required to use the services of the franchisee, regardless of cost?

In connection with this inquiry, I would like to direct your attention to section 44.031, Education Code. Section 44.031 (a) requires school district contracts valued at \$25,000 or more



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in a 12-month period to be made by whichever of the methods specified in the subsection that produces the best value to the district. Given that PISD is spending more than \$25,000 a year on garbage collection in the City of Pasadena, does Section 44.031 require PISD to obtain services through one of the methods specified in Subsection (a)? If so, does that requirement prevail over the exclusive franchise granted by the City of Pasadena? It seems that the statute would prevail if it in fact required PISD to purchase garbage collection services in a manner inconsistent with the ordinance granting the exclusive franchise. The Texas Constitution generally prohibits a home-rule municipality from enforcing any legislation inconsistent with state law. Dallas Merchant's & Concessionaire's Association, 852 S.W.2d 489, 491 (Tex. 1993) (citing City of Brookside Village v. Comeau, 633 S.W.2d 790, 796 (Tex. 1982), cert. denied, 459 U.S. 1087 (1982)).

However, upon further examination, it seems unclear if Section 44.031(a), Education Code, actually presents a conflict with the city ordinance. Section 44.031(a) arguably applies only when a school district **contract** is to be made. It is my understanding that PISD does not contract with the garbage collection vendor operating in the City of Pasadena, but rather PISD is billed by the vendor for service without the governance of a written contract. PISD might be able to continue that arrangement without falling under Section 44.031(a).

Even if Section 44.031(a) were determined to apply to the arrangement, Section 44.031(j) may provide an explicit exception. Subsection (j) states that a school district may purchase an item available from only one source without complying with Subsection (a). One could argue that the garbage collection within the borders of the City of Pasadena is only available from one source, due to the franchise granted by the city to a single garbage collection vendor, and as a result Section 44.031(j) permits PISD to purchase services without competitive bidding or any of the other contract procedures prescribed by Section 44.031(a). Does Subsection (j) apply when availability of an item or service has been artificially limited through an exclusive franchise, or only when the item or service can be physically produced only by a single provider?

In addition, I would also like to call your attention to the issue of whether a separate political entity such as a school district is subject to a municipal ordinance governing garbage collection in the first place. An independent school district is an independent political entity. Prot Arthur Independent School District v. City of Groves, 376 S.W.2d 330, 333 (Tex. 1964). The trustees of an independent school district "have the exclusive power and duty to govern and oversee the management of the public schools of the district." Section 11.151(b), Education Code. Does a home-rule municipality's power to grant a franchise for garbage collection extend to the point of restricting a school district's ability to manage its property efficiently and economically?

However, I understand that court cases suggest that a municipal ordinance will be enforced against a school district if it does not unreasonably interfere with the district's ability to carry out its basic educational functions.

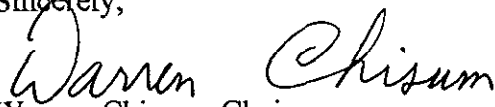
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In somewhat analogous conflicts, Texas courts have held that in certain cases a school district's authority to determine sites for schools and school facilities prevails over a municipality's zoning authority. Austin Independent School District v. City of Sunset Valley, 502 S.W.2d 670, 672 (Tex. 1973; City of Addison v. Dallas Independent School District, 632 S.W.2d 771, 772 (Tex. App.--Dallas 1982, writ ref'd n.r.e.). Texas courts have also, however, upheld a municipality's ability to impose reasonable building code requirements on a school district's construction. Port Arthur Independent School District v. City of Groves, 376 S.W.2d at 334. It is unclear how an ordinance limiting garbage collection to one vendor would be treated under the analyses contained in these cases.

A municipality's interest in limiting collection of garbage to one provider does not seem as strong as a municipality's interest in enforcing building codes such as the one upheld in Port Arthur. A building code protects citizen safety by requiring minimum standards during construction. Construction is a complicated undertaking often involving many participants. There are many opportunities for serious errors with substantial adverse consequences, and a building code is thus a necessary safeguard. Garbage collection, on the other hand, is a much less complicated process with much less opportunity for error. The interest in and need for control of all garbage collection by a municipality may be outweighed by a school district's interest in controlling the daily operation of its schools in the manner that is the most efficient and economical, especially at a time when our schools are in need of additional financial support.

I look forward to receiving your opinion on this matter. Please let me know if I can provide you with any additional information.

Sincerely,


Warren Chisum, Chairman
House Committee on Environmental Regulation

WC/ds